

## NEBRASKA ADMINISTRATIVE CODE

### TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

#### CHAPTER 14 - PERMITS; TERMS AND CONDITIONS - GENERAL

001 The following conditions apply to all NPDES permits under this Title:

001.01 Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Federal and State Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

001.01A The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

001.02 Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

001.03 Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

001.04 Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

001.05 Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

001.06 Permit actions. The permit may be modified, revoked and reissued, or

terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

001.07 Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

001.08 Duty to provide information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

001.09 Inspection and entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

001.09A Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

001.09B Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

001.09C Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

001.09D Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Federal or State Act, any substances or parameters at any location.

001.10 Monitoring and records.

001.10A Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

001.10B Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years or as specified in 40 CFR part 503 (or longer if required by the Director, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years

from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

001.10C Records of monitoring information shall include:

- 001.10C1 The date, exact place, and time of sampling or measurements;
- 001.10C2 The individual(s) who performed the sampling or measurements;
- 001.10C3 The date(s) analyses were performed;
- 001.10C4 The individual(s) who performed the analyses;
- 001.10C5 The analytical techniques or methods used; and
- 001.10C6 The results of such analyses.

001.10D Monitoring results must be conducted according to test procedures approved under the conditions and requirements of 40 CFR part 136 Pertaining to Guidelines Establishing Test Procedures For The Analysis Of Pollutants (40 CFR part 136) are hereby adopted and incorporated by reference or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or other test procedures have been specified in the permit.

001.11 Signatory requirement.

001.11A All applications, reports, or information submitted to the Director shall be signed and certified in accordance with Chapter 13.

001.12 Reporting requirements.

001.12A Planned changes. The permittee shall give notice to the Director 180 days prior to any planned physical alterations, additions to the permitted facility, production increases or process modifications. Notice is required only when:

- 001.12A1 The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source or;
- 001.12A2 The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements.
- 001.12A3 The alteration or addition results in a significant change in the

permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

001.12B Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

001.12C Transfers. The permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

001.12D Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit.

001.12D1 Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

001.12D2 If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136, unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

001.12D3 If the permittee monitors any pollutant more frequently than required by the permit, for process control purposes only and is not a violation of the permit effluent limitations, these results need not be submitted by must be made available to the Department upon request.

001.12D4 Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

001.12F Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

001.12G Twenty-four hour noncompliance reporting.

001.12G1 The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

001.12G2 The following shall be included as information which must be reported within 24 hours under this paragraph.

001.12G2(a) Any unanticipated bypass which exceeds any effluent limitation in the permit.

001.12G2(b) Any upset which exceeds any effluent limitation in the permit.

001.12G2(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours

001.12G2(d) The Director may waive the written report on a case-by-case basis for reports if the oral report has been received within 24 hours.

001.12H Other noncompliance. The permittee shall report all instances of noncompliance not reported under previous subsections of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph 001.12F1 of this section.

001.12I Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

001.13 Bypass:

001.13A Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 001.13A2.

001.13A1 Notice:

001.13A1(a) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

001.13A1(b) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph 001.12F of this section.

001.13A2 Prohibition of bypass.

001.13A2(a) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

001.13A2(a)(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

001.13A2(a)(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

001.13A2(a)(3) The permittee submitted notices as required under paragraph 001.13A1 of this section.

001.13B The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 001.14A2(a) of this section.

001.14 Upset:

001.14A Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 001.14A1 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

001.14A1 Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

001.14A1(a) An upset occurred and that the permittee can identify the cause(s)

of the upset;

001.14A1(b) The permitted facility was at the time being properly operated; and

001.14A1(c) The permittee submitted notice of the upset as required in paragraph 001.12F2(b) of this section.

001.14A1(d) The permittee complied with any remedial measures required in section 001.01D of this chapter.

001.14B Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

002 Prior to the existence of any applicable standard referred in 001 above, in determining the terms and conditions of any issued permit the Director shall apply existing water quality standards, and any other requirements which the Director determines are necessary in order to achieve best practicable control technology, best available control technology, best conventional pollutant control technology, or new source performance standards whichever is appropriate, to carry out the provisions of State and Federal Law.

003 The discharge of any pollutant not identified and authorized by the NPDES permit or the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.

004 The Industrial User, in order to maintain compliance with these regulations shall control production and all discharges upon reduction, loss or failure of the pretreatment facility until the facility is restored or an alternative method of treatment is provided. This applies in the situation where, among other things, the primary source of power of the pretreatment facility is reduced, lost, or fails.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(11), (12), (15), (20), (21), (24), (25), and (30); 81-1505(4), (11), and (20)

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